

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

IBG LLC and INTERACTIVE BROKERS LLC,
Petitioners

v.

TRADING TECHNOLOGIES INTERNATIONAL, INC.,
Patent Owner

Case CBM2016-00009
Patent 7,685,055 B2

**PETITIONERS' RESPONSE TO PATENT OWNER'S
DECEMBER 13, 2016 MOTION FOR OBSERVATION (PAPER 52)**

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Petitioners file their Response to Patent Owner's (PO) Motion for Observation on Cross-Examination Testimony of Petitioner's Declarant David Rho (Paper 52) ("Motion") in accordance with modified Due Date 5 (Paper 46).

The Board should give no weight to PO's purported observations because they mischaracterize Mr. Rho's testimony, ignore relevant testimony, and ultimately fail to contradict any of Petitioners' positions in this proceeding. Additionally, each of PO's observations is deficient on its face because it fails to explain **why** the identified testimony is allegedly relevant. Office Patent Trial Practice Guide, 77 Fed. Reg. 48753, 48768 (Aug. 14, 2012) (the proper form of observations include: "The testimony is relevant because __.").

I. Response to PO's first observation

PO's first observation alleges that Mr. Rho's testimony at Exhibit 2342, page 34, lines 10-21, "is relevant to Patent Owner's request that this opinion, along with the arguments made by Petitioner that rely on this opinion be stricken from Petitioner's Reply." (Motion at 1.)

PO's first observation is deficient because it fails (1) to identify where PO made its alleged "request"; (2) to identify which portion(s) of Petitioners' Reply the identified testimony is allegedly relevant to; and (3) to explain **why** the identified testimony is allegedly relevant. PO's first observation also ignores relevant testimony. Rho testified that Exhibit 1004 ("Rho Dec. I") includes the

same “overview of TSE” as Exhibit 1035 (“Rho Dec. II”). (Exhibit 2342 at 20:5-21:16.) The “overview of TSE” in Rho Dec. I describes modes and functions of TSE relied upon in Rho Dec. II. (*Compare* Rho Dec. I at ¶¶ 28-36, *with*, Rho Dec. II at ¶¶ 5, 11-19, 21, 23-25.)

II. Response to PO's second observation

PO's second observation alleges that Mr. Rho's testimony at Exhibit 2342, page 37, line 7, to page 38, line 6, “is relevant to Patent Owner's request that this opinion, along with the arguments made by Petitioner that rely on this opinion, be stricken from Petitioner's Reply.” (Motion at 2.)

PO's second observation is deficient because it fails (1) to identify where PO made its alleged “request”; (2) to identify which portion(s) of Petitioners' Reply the identified testimony is allegedly relevant to; and (3) to explain **why** the identified testimony is allegedly relevant. PO's second observation also fails to establish that any portion of Petitioners' Reply or Rho Dec. II should be stricken because (in addition to ignoring the testimony discussed in Petitioners' Response to PO's first observation *supra*) the identified testimony demonstrates that the referenced portion of Rho Dec. II responds to “TT's interpretation of the term price levels.” (Exhibit 2342 at 37:7-38:6.) 37 C.F.R. § 42.23(b) (“A reply may only **respond to** arguments raised in the corresponding . . . patent owner response.”) (emphasis added).

III. Response to PO's third observation

PO's third observation alleges that Mr. Rho's testimony at Exhibit 2342, page 55, lines 4-9, "is relevant to the weight and sufficiency of Mr. Rho's opinion set forth in paragraphs 22-25 of his Reply declaration (Exhibit 1035) regarding the 'adjusting' claim limitation." (Motion at 3.)

PO's third observation is deficient because it does not explain **why** the identified testimony is allegedly relevant. PO's third observation also ignores relevant testimony. Mr. Rho testified that he reviewed the '055 patent's file history (Rho Dec. I at ¶ 5), which demonstrates that Mr. Rho is familiar with the intrinsic record of the '055 patent.

IV. Response to PO's fourth observation

PO's fourth observation alleges that Mr. Rho's testimony at Exhibit 2342, page 81, line 7, to page 82, line 5, "is relevant to the weight and sufficiency of Mr. Rho's opinion (set forth in paragraphs 22-25 of his Reply declaration (Exhibit 1035)) that 'a PHOSITA would have understood that transitioning or "adjusting" from a "Board x4" display to a "Board x 2" display would add 13 price levels.'" (Motion at 3-4.)

PO's fourth observation is deficient because it does not explain **why** the identified testimony is allegedly relevant. PO's fourth observation also ignores relevant testimony. Mr. Rho testified that it would have been obvious to a POSITA

to transition the same issue (i.e., same commodity) from Boardx4 display to Boardx2 display. (Exhibit 2342 at 66:14-70:7.) Mr. Rho also explained how a trader using TSE would transition from Boardx4 display to Boardx2 display (*id.* at 114:13-117:5), and that a POSITA would have understood that this transition “meets the claim language in the ’055 patent.” (*id.* at 112:9-114:12; *see also id.* at 106:9-107:12). This testimony is also relevant to put the testimony cited by PO in the proper context.

V. Response to PO’s fifth observation

PO’s fifth observation alleges that Mr. Rho’s testimony at Exhibit 2342, page 103, line 17, to page 104, line 3, “is relevant to whether transitioning from TSE’s ‘Board x 4’ display to TSE’s ‘Board x 2’ display meets the ‘adjusting the first plurality of price levels among a range of price levels . . .’ claim limitation.” (Motion at 4-5.)

PO’s fifth observation is deficient because it does not explain **why** the identified testimony is allegedly relevant.

VI. Response to PO’s sixth observation

PO’s sixth observation alleges that Mr. Rho’s testimony at Exhibit 2342, page 109, line 9, to page 110, line 3, “is relevant to whether ‘a PHOSITA would have understood that transitioning or “adjusting” from a “Board x4” display to a “Board x 2” display would add 13 price levels,’ and whether transitioning from

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